

August 23, 2000

Via E-Mail and Federal Express

Title VI Guidance Comments
U.S. Environmental Protection Agency
Office of Civil Rights (1201A)
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Washington, D.C.
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SANTA CLARA COUNTY
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(Vice-Chairperson)
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SOLANO COUNTY
William Carroll
(Secretary)

SONOMA COUNTY
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Ellen Garvey
**EXECUTIVE OFFICER/
AIR POLLUTION
CONTROL OFFICER**

Subject: Bay Area Air Quality Management District's Comments on EPA's Draft Title VI Guidance for EPA Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Investigation Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 FR 39650 (June 27, 2000)

The Bay Area Air Quality Management District (Bay Area AQMD) appreciates and welcomes this opportunity to comment on the above-referenced Title VI guidance documents. The Bay Area AQMD is a local air pollution control district committed to achieving clean air to protect the public health of all the people who live, work, play and breathe in the San Francisco Bay Area. Given this mission, the Bay Area AQMD believes that compliance with the anti-discriminatory mandate in Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) in its air quality permitting program is an important goal for air quality policymaking and implementation.

We commend the EPA for incorporating many of the extensive and relevant public comments it received on its 1998 Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits. During the 1998 Interim Guidance comment period, the Bay Area AQMD, like many other local and state governmental agencies that administer environmental permit programs, expressed serious concerns about the direction and practical effect of the 1998 Interim Guidance and requested that significant changes be made to the Interim Guidance in order to address those concerns. The Draft Recipient Guidance and the Revised Draft Investigation Guidance are positive steps in the direction towards addressing those concerns.

Just as the EPA has sought to answer procedural and substantive issues related to how its Office of Civil Rights will receive, process, and investigate a Title VI administrative complaint pursuant to 40 CFR Part 7 – Nondiscrimination In Programs Receiving Federal Assistance From The Environmental Protection

Agency, the Bay Area AQMD has also taken positive steps to address “environmental justice” in its geographical and regulatory jurisdiction. On August 4, 1999, the Bay Area AQMD Board of Directors unanimously adopted “Guiding Principles of Environmental Justice for the Bay Area AQMD’s Exercise of its Statutory Authority.” See Attachment 1. These principles create a framework for the Bay Area AQMD to review of its existing programs and regulations and a foundation for better Title VI compliance in its programs, policies and regulations. To this end, the Bay Area AQMD has recently embarked upon an environmental justice work group process involving representatives from community groups, environmental groups, industry, labor, federal, state and local government and academia to review and comment upon the Bay Area AQMD’s strategies for “equal access to complaint resolution, rule and permit evaluation; equal enforcement activities; outreach and education programs; and soliciting concerns and ideas from communities where there may be actual or perceived disproportionately high and adverse health effects.” This joint stakeholder process will report its findings and recommendations directly to the Board of Directors’ Executive Committee for consideration and possible action.

In addition to this stakeholder process, District staff, in cooperation with the California Air Resources Board (“CARB”), the California Air Pollution Control Officers’ Association and EPA Region IX, will assess how the Bay Area AQMD currently addresses air pollution prevention, less air polluting alternative technologies, data collection and analysis, technical assistance, commenting responsibilities and project review under the California Environmental Quality Act (“CEQA”; Calif. Pub. Res. Code § 21000 et seq.), the impact and direction of applicable state law or legislation in the area of environmental justice and the definition of key terms and phrases such as “disproportionately high and adverse health impacts of air pollution.”

Bay Area AQMD staff is also involved in statewide environmental justice and Title VI compliance efforts. Pursuant to California Government Code Section 65040.12, the Director of the Office of Planning and Research shall coordinate state and local agency efforts regarding environmental justice. This code section also defines “environmental justice” as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental statutes, ordinances, regulations, and public policies.” Moreover, pursuant to California Public Resources Code Section 72001, the California Environmental Protection Agency (“CalEPA”) shall develop a model environmental justice mission statement for use by all the state environmental regulatory agencies under its purview. Specifically, the Bay Area AQMD is actively involved in CARB’s nascent Neighborhood Assessment Program (“NAP”) which is designed develop tools and guidelines for evaluating cumulative air pollution impacts at the

neighborhood-scale. The Bay Area AQMD development of its own environmental justice and Title VI compliance program will be consistent with these larger statewide efforts.

All of these state and local governmental efforts have in common the intent and goal of precluding violations of Title VI in the environmental permitting program. EPA must, however, recognize that state and local air quality management/protection agencies like the Bay Area AQMD have a limited legal jurisdiction and authority. Agencies such as ours do not have the legal jurisdiction or authority that is accorded to general land use government entities like cities and counties. This is very important because existing land use patterns and zoning oftentimes results in minority communities living near industrial sites and high mobile source traffic areas. Simply put, the Bay Area AQMD is not a land use agency and cannot mandate where a particular facility owner or operator can locate its facility.

As much improved as these Title VI guidance documents are in comparison to the 1998 Interim Guidance, they still pose a problem for local air pollution control agencies like the Bay Area AQMD. Federally mandated Clean Air Act program requirements from new source review to prevention of significant deterioration to the Title V permit program to emissions trading represent conflicting mandates when viewed from a Title VI perspective. Although we agree that it is to everyone's best interest to prevent disproportionate adverse environmental impacts to any segment of the population, the Bay Area AQMD's implementation of Clean Air Act mandated programs may lead to a Title VI challenge for each and every permit action taken. The Bay Area AQMD's fear is that such challenges may cause more air quality harm than good.

We have attached a detailed set of comments on the Draft Recipient and Draft Revised Investigation Guidance for your consideration. The Bay Area AQMD looks forward to working with your staff in developing a workable, equitable and reasonable program that protects all people.

Sincerely,

Ellen Garvey
Executive Officer
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San Francisco, CA

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